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DEPARTMENT OF BUSINESS AND INDUSTRY
**LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD**

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June 3, 2015

**MINUTES OF THE WORKSHOP TO SOLICIT COMMENTS FOR NEW REGULATIONS
OR CHANGES TO EXISTING REGULATIONS PERTAINING TO ELECTIONS**

A workshop of the Local Government Employee-Management Relations Board, properly noticed and posted pursuant to the Nevada Open Meeting Law, was held on Wednesday, May 27, 2015, at the hour of 1:30 p.m. at the Bradley Building, 2501 E. Sahara Avenue, Room 200, Las Vegas, Nevada 89104. The meeting was video-conferenced to the Department of Business and Industry Director's Office, 1830 College Parkway, Suite 100, Carson City, Nevada 89706.

The meeting was conducted by EMRB Commissioner Bruce K. Snyder.

Also present representing the EMRB were: Philip E. Larson, EMRB Chairman
Scott Davis, Esq., Deputy Attorney General
Marisu Romualdez Abellar, Board Secretary

Present from the public in Las Vegas were: Adam Levine, Law Office of Daniel Marks
Kristin Martin, Teamsters Local 14
Grant Davis, Teamsters Local 14
Dolores Bodie, SEIU, Local 1107
Paul Cotsonis, SEIU, Local 1107
Neal Morton, Las Vegas Review-Journal

Present from the public in Carson City was: Frank Flaherty, Dyer Lawrence

The Agenda:

Item 1 Public Comment.

No public comment related to the agency was offered.

Item 2 The Determination of Majority Support, Including Any Standards Thereto.
Commissioner Snyder briefly explained the proposal to change the standard for the determination of majority support of a bargaining unit and invited comments from those in attendance.

Attorney Frank Flaherty thereupon stated that the election regulations flow from NAC 288.160(4). Twice the Nevada Supreme Court has stated that a "winner" of an election must have a majority of the votes of those eligible to vote. In 2005 the Nevada Supreme Court stated that in the case of an unambiguous statute, the statute must be followed as written and that it should defer to the legislature, who alone would have the right to change the law, respecting the separation of powers doctrine.

He further stated that the proposed regulation would not pass muster with the Legislative Counsel Bureau when they are apprised of the two Nevada Supreme Court decisions.

Kristin Martin stated it is well settled that the law governing administrative agencies allows them to change their rules as they have the expertise. To carry out the intent of the legislature, an administrative agency should be required to adopt a process that leads to a result or works and not to be forced to have a process that can't produce a result.

With respect to the Supreme Court orders, Ms. Martin stated that the decisions were not published and therefore are not precedential. Finally, only the parts of a decision not dicta are binding and the comments of the court, deferring to the EMRB's interpretation of its own statute, are only dicta. In effect, the Supreme Court was only giving deference to the EMRB of its own interpretation.

Ms. Martin finally mentioned that the regulation needed a slight revision because now if the nonunion vote option prevails, the regulation as currently written states that it would be the exclusive bargaining agent, which cannot happen. Commissioner Snyder mentioned he would clean up that language. He also mentioned that the reference at the beginning of the regulation to NRS 288.070 should instead be NRS 288.110.

Commissioner Snyder then read the portion of the letter from attorney Michael Langton regarding the determination of majority support, a copy of which is attached to these minutes.

Attorney Adam Levine then commented that it is a well settled principle of statutory construction that a statute or regulation should be construed in a manner that does not lead to absurd results and that allowing a bargaining agent to remain in power, which cannot get a majority of the unit to support it, is an absurd result.

Frank Flaherty additionally stated that although it may be a general rule that administrative agencies have the expertise to interpret their rules, it is not true when the Supreme Court has already done so. Therefore, the EMRB no longer has the ability to do so. He also stated it makes no sense to interpret NAC 288.160(1) and (2) as requiring an initial showing of 50% of those in the bargaining unit but that an election need only be a majority of those voting. Finally, he responded to Ms.

Martin's statement on dicta by saying that the Nevada Supreme Court's statements on the issue were not dicta, but were integral to its decisions.

Kristin Martin responded by stating that NAC 288.160(1) and (2) can be harmonized with NAC 288.160(4) in that the first two subsections involve situations in which there is no election while subsection (4) involves the holding of an election.

Item 3

The Payment of Costs Related to Elections, Including Runoff Elections.

Commissioner Snyder read the next portion of the letter from attorney Michael Langton, regarding the payment of costs related to elections.

Commissioner Snyder then summarized the four options proposed at this time and stated that other options could be offered by those in attendance.

Attorney Frank Flaherty stated that his law firm had researched other state laws and regulations on the subject and learned that only a few require the reimbursement of costs and that the predominant method was to divide the costs among the parties. However, it was first required that a party have a sufficient showing of interest before an election was scheduled. One state mandated that the petitioner pay the costs while another state required a party to pay the costs if the election had to be rescheduled.

Attorney Adam Levine then inquired as to the cost of elections, whereupon Commissioner Snyder stated that the most recent election, involving 11,000 potential voters, cost more than \$25,000, including amounts voluntarily contributed by the parties. He further stated that the cost greatly depends on the type of election held as elections where the ballots are mailed cost more due to postage, as compared to elections where balloting can be done on-site in one day. Moreover, elections involving smaller units would not require the renting of a ballroom in which to count the ballots.

Attorney Kristin Martin cautioned the agency not to change the current system whereby the EMRB pays the cost of the election, but if a change is to be made she favors each party paying one-half the cost. She further stated that having the petitioner pay the entire cost would discourage elections while having the winner or loser pay would be impractical as many elections do not result in a clear-cut winner or loser.

Commissioner Snyder stated that cost reimbursement alternatives are being looked at for two reasons. First, because elections have been rare events monies have not been budgeted for them. Instead, the monies need to come from the reserves. Although the reserves today are healthy, continued elections will deplete them. Secondly, the agency learned from the last election that the process of obtaining approval for a work program, to move sufficient funds from the reserves for the election, is a timely process that slows down the holding of an election by at least a few months. Having a different system in place would expedite the holding of elections.

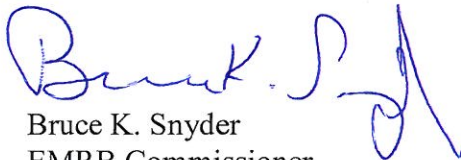
Commissioner Snyder stated that the next step will occur on June 9, 2015 at the Board's next meeting, at which time he will submit the minutes to them and orally report on the comments made at this workshop. The Board will then decide what options to choose, if any, in modifying the current election regulations. If the Board chooses to go forward, then the draft of the regulation, as amended by the comments today, will then be submitted to the Legislative Counsel Bureau for its review. Once received back from the LCB, the agency would then schedule another workshop, followed by a hearing before the Board. If the Board approves the regulation, it would then be submitted to the Legislative Commission, which would either approve or reject the regulation. All this could take several months.

Item 4

Additional Period of General Public Comment.

No public comment related to the agency was offered.

Respectfully submitted,



Bruce K. Snyder
EMRB Commissioner

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May 11, 2015

Bruce Snyder, Commissioner
EMRB
2501 E. Sahara, Ste. 203
Las Vegas, Nevada 89104

***RE: Workshop To Solicit Comments For New Regulations
Or Changes to Existing Regulations Pertaining to
Elections***

Dear Commissioner Snyder:

I have received the Notice of Workshop To Solicit Comments For New Regulations Or Changes To Existing Regulations Pertaining to Elections and, although I do not see that written comments prior to the May 27, 2015, date are allowed, I am writing to give my opinion concerning the above solicitation. Accordingly, I respectfully request that these comments be considered and entered into the record, if possible.

It is a little confusing on the paper that I have which references NAC 288.070 "Elections"; I believe it should be NAC 288.110 "Elections."

My clients and I are in full support of proposed changes to NAC 288.110, subsection 7. However, I am not in support of the provisions concerning allocation of costs as proposed by any of the four proposals.

It is my opinion that, when an employer refuses to recognize an employee organization that has offered to demonstrate support by showing authorization cards to a neutral third party, (as a means of protecting employees against retaliation, and a method which also protects the employer from false accusations of retaliation), the petitioning association or union should not be required to pay the full costs of the election because it is only due to the employer's failure to accept the evidence of support that the election is being held at all. In such cases the costs of the

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election should be shared between the employer and the employee organization, or in the alternative, the "loser" should bear the full costs.

Thank you for your consideration of the above. If you have any questions concerning my position, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Mike Langton". The signature is written in dark ink and includes a long horizontal flourish extending to the right.

Michael E. Langton, Esq.

MEL: mek
cc: Clients